

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of FREEPORT VENTURES, LLC d/b/a
5 VALIANT AUTO LLC d/b/a AUTOMOTIVE SERVICES CENTER
6 (“Defendant”) in negligently, knowingly, and/or willfully contacting Plaintiff on
7 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
8 Act, 47. U.S.C. § 227 *et seq.* (“TCPA”) and related regulations, thereby invading
9 Plaintiff’s privacy.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,
12 a resident of Texas, seeks relief on behalf of a Class, which will result in at least
13 one class member belonging to a different state than that of Defendant, a California
14 company. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation
15 of the TCPA, which, when aggregated among a proposed class in the thousands,
16 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both
17 diversity jurisdiction and the damages threshold under the Class Action Fairness
18 Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

19 3. Venue is proper in the United States District Court for the Central
20 District of California pursuant to 28 U.S.C. § 1391(b) and because Defendant does
21 business within the State of California, and has locations in Orange County.

22 **PARTIES**

23 4. Plaintiff, KENT HARRIS (“Plaintiff”), is a natural person residing in
24 Katy, Texas and is a “person” as defined by 47 U.S.C. § 153 (39).

25 5. Defendant, FREEPORT VENTURES, LLC d/b/a VALIANT AUTO
26 LLC d/b/a AUTOMOTIVE SERVICES CENTER (“Defendant”) is an auto
27 warranty services company, and is a “person” as defined by 47 U.S.C. § 153 (39).

28 6. The above named Defendants, and their subsidiaries and agents, are

1 collectively referred to as “Defendants.” The true names and capacities of the
2 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
3 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
4 names. Each of the Defendants designated herein as a DOE is legally responsible
5 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
6 Complaint to reflect the true names and capacities of the DOE Defendants when
7 such identities become known.

8 7. Plaintiff is informed and believes that at all relevant times, each and
9 every Defendant was acting as an agent and/or employee of each of the other
10 Defendants and was acting within the course and scope of said agency and/or
11 employment with the full knowledge and consent of each of the other Defendants.
12 Plaintiff is informed and believes that each of the acts and/or omissions complained
13 of herein was made known to, and ratified by, each of the other Defendants.

14 **FACTUAL ALLEGATIONS**

15 8. Beginning in or around January 2018, Defendant contacted Plaintiff
16 on Plaintiff’s cellular telephone number ending in -1967, in an attempt to solicit
17 Plaintiff to purchase Defendant’s services.

18 9. Defendant used an “automatic telephone dialing system” as defined
19 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

20 10. Defendant contacted or attempted to contact Plaintiff from telephone
21 numbers including, but not limited to (832) 241-8827 confirmed to be Defendant’s
22 number.

23 11. Defendant’s calls constituted calls that were not for emergency
24 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

25 12. During all relevant times, Defendant did not possess Plaintiff’s “prior
26 express consent” to receive calls using an automatic telephone dialing system or an
27 artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. §
28 227(b)(1)(A).

13. Plaintiff is not a customer of Defendant's services and has never provided any personal information, including her cellular telephone number, to Defendant for any purpose whatsoever. Accordingly, Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

CLASS ALLEGATIONS

14. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class ("The Class").

15. The class concerning the ATDS claim for no prior express consent is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

16. Plaintiff represents, and is a member of, The Class, consisting of all persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

17. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

1 18. The Class is so numerous that the individual joinder of all of its
2 members is impractical. While the exact number and identities of The Class
3 members are unknown to Plaintiff at this time and can only be ascertained through
4 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
5 The Class includes thousands of members. Plaintiff alleges that The Class
6 members may be ascertained by the records maintained by Defendant.

7 19. Plaintiff and members of The Class were harmed by the acts of
8 Defendants in at least the following ways: Defendant illegally contacted Plaintiff
9 and The Class members via their cellular telephones thereby causing Plaintiff and
10 The Class members to incur certain charges or reduced telephone time for which
11 Plaintiff and The Class members had previously paid by having to retrieve or
12 administer messages left by Defendant during those illegal calls, and invading the
13 privacy of said Plaintiff and The Class members.

14 20. Common questions of fact and law exist as to all members of The
15 Class which predominate over any questions affecting only individual members of
16 The Class. These common legal and factual questions, which do not vary between
17 Class members, and which may be determined without reference to the individual
18 circumstances of any The Class members, include, but are not limited to, the
19 following:

- 20 a. Whether, within the four years prior to the filing of this
21 Complaint, Defendant made any telemarketing/solicitation call
22 (other than a call made for emergency purposes or made with
23 the prior express consent of the called party) to a Class member
24 using any automatic telephone dialing system or any artificial
25 or prerecorded voice to any telephone number assigned to a
26 cellular telephone service;
- 27 b. Whether Plaintiff and The Class members were damaged
28 thereby, and the extent of damages for such violation; and

1 c. Whether Defendant should be enjoined from engaging in such
2 conduct in the future.

3 21. As a person that received numerous telemarketing/solicitation calls
4 from Defendant using an automatic telephone dialing system or an artificial or
5 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
6 claims that are typical of The Class.

7 22. Plaintiff will fairly and adequately protect the interests of the members
8 of The Class. Plaintiff has retained attorneys experienced in the prosecution of
9 class actions.

10 23. A class action is superior to other available methods of fair and
11 efficient adjudication of this controversy, since individual litigation of the claims
12 of all Class members is impracticable. Even if every Class member could afford
13 individual litigation, the court system could not. It would be unduly burdensome
14 to the courts in which individual litigation of numerous issues would proceed.
15 Individualized litigation would also present the potential for varying, inconsistent,
16 or contradictory judgments and would magnify the delay and expense to all parties
17 and to the court system resulting from multiple trials of the same complex factual
18 issues. By contrast, the conduct of this action as a class action presents fewer
19 management difficulties, conserves the resources of the parties and of the court
20 system, and protects the rights of each Class member.

21 24. The prosecution of separate actions by individual Class members
22 would create a risk of adjudications with respect to them that would, as a practical
23 matter, be dispositive of the interests of the other Class members not parties to such
24 adjudications or that would substantially impair or impede the ability of such non-
25 party Class members to protect their interests.

26 25. Defendant has acted or refused to act in respects generally applicable
27 to The Class, thereby making appropriate final and injunctive relief with regard to
28 the members of the Class as a whole.

FIRST CAUSE OF ACTION

**Negligent Violations of the Telephone Consumer Protection Act
47 U.S.C. §227(b).**

26. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-25.

27. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular 47 U.S.C. § 227 (b)(1)(A).

28. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b), Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

29. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227(b)**

30. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-25.

31. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular 47 U.S.C. § 227 (b)(1)(A).

32. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

33. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

**Negligent Violations of the Telephone Consumer Protection Act
47 U.S.C. §227(b)**

- As a result of Defendant's negligent violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

**Knowing and/or Willful Violations of the Telephone Consumer Protection Act
47 U.S.C. §227(b)**

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

34. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 16th Day of November, 2018.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff